



BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

No opinion was filed by the Circuit Court of Lake County, Illinois. The opinion of the Appellate Court of Illinois for the Second District transferring the cause to the Supreme Court of Illinois is printed in abstract form merely at 318 Ill. App. 646. But a full copy is attached (Appendix A). The opinion of the Supreme Court of the State of Illinois is reported in 387 Ill. 159 (Appendix B).

Jurisdiction.

The jurisdiction of this court is invoked under Section 237 (b) of the Judicial Code as amended. 28 U. S. C. A. 344 (b).

The Supreme Court of the State of Illinois (being the highest court of the State of Illinois) on May 16, 1944, reversed and remanded the judgment entered by the Circuit Court of Lake County, Illinois. Petition for rehearing was duly filed and was denied on September 14, 1944. The last two paragraphs of the decision of the Supreme Court of Illinois specifically direct what judgment (and the amount thereof) shall be entered by the lower court. It is the settled law of Illinois that when a decree is reversed with specific directions the lower court has no discretion but must make effective the judgment of the higher court. *Crozier v. Freeman Coal Min. Co.*, 363 Ill. 362 at 390; *Roggenbruck v. Breuhaus*, 330 Ill. 294 at 297; *People v. Miltzer*, 301 Ill. 284 at 287; *P. C. C. & St. L. Ry. Co. v. Gage*, 286 Ill. 213 at 216-217; *Dunlap v. Pierce*, 260 Ill. App. 149 at 154.

It has also been held that if the cause is remanded with

directions to enter a particular judgment or decree, the lower court has no discretion in the matter and must enter it accordingly. Dodds & Edmunds "Illinois Appellate Practice," Sec. 1330; *Trustees v. Hoyt*, 318 Ill. 60 at 61; *Smith v. Dugger*, 318 Ill. 215 at 216.

A certified transcript of record, the petition for the issuance of writ of certiorari and supporting brief annexed thereto are filed herein with the clerk of this court within three months after denial of said petition for rehearing by the Supreme Court of Illinois.

Statement of the Case.

The essential facts have been fully set forth in the petition under the caption "Summary and Short Statement of the Matter," which is hereby adopted. Any necessary elaboration of the facts involved will be covered in the argument to follow.

Specification of Assigned Errors.

The Supreme Court of the State of Illinois erred:

1. In disregarding the prior judgment duly entered by the District Court of the United States for the Northern District of Illinois, Eastern Division, in a suit between the same parties and involving the same subject matter.
2. In holding certain bonds partially void, which had theretofore been adjudicated valid and binding by judgment of the District Court in favor of one of the parties and against the other in a proceeding wherein said court had jurisdiction of the subject matter, the parties and the cause.
3. In failing to hold that the decision of the District Court was *res judicata* as to the validity of the bonds.
4. In failing to recognize provisions of Section 905 United States Statutes, 28 U. S. C. A. 687.

SUMMARY OF ARGUMENT.

I.

Petitioner, by virtue of Section 237(b) of the Judicial Code as amended, is entitled to have a writ of certiorari issued.

II.

The judgment of the United States District Court for the Northern District of Illinois, Eastern Division, in the case of *The Ohio National Life Insurance Company v. Grant Community High School District No. 124*, entered June 30, 1936, is *res judicata* as to the validity of the bonds involved in this case.

III.

The position of the Supreme Court of Illinois that the Federal Court was not the forum where the constitutionality of the act could be determined overlooks the distinction between rule of decision and *res judicata*.

ARGUMENT.

MAY IT PLEASE THE COURT:

I.

The District Court of the United States in 1936 entered judgment in favor of petitioner, The Ohio National Life Insurance Company, against the school district for interest due on certain bonds. The validity of the bonds was the essential issue in the case. The complaint filed in the Federal District Court is abstracted as follows:

“Paragraph 3—After the bonds had been issued and sold, certain questions arose in a tax objection suit to which the holders of the bonds were not parties, concerning the validity of said bonds due to alleged irregularities in the proceedings had in connection with the issuance thereof. That thereafter, a certain validating act was passed by the General Assembly of the State of Illinois, approved June 6, 1935, which act is set out in the paragraph. And then the paragraph alleges that by reason of said validating act, all proceedings had in connection with the issuance of said bonds are expressly validated, and said bonds and the interest coupons thereto attached are valid and legally binding obligations of the defendant” (R. 105).

The answer, after admitting the issuance of the bonds and the failure to pay the interest, neither admitted nor denied the validity of the validating act and neither admitted nor denied that the bonds and interest coupons were valid and legally binding on the defendant district, which placed the burden of proof on the plaintiff. In the

5th paragraph of the answer the school district denied that the plaintiff was entitled to the relief prayed in the complaint (R. 107).

There was no quarrel as to the issuance of the bonds and no controversy as to the amount of unpaid interest coupons. The one and only issue was the validity of the bonds and the effectiveness of the validating act. It was necessary for the court to pass on that issue in order to uphold the bonds and allow the payment of interest.

There can be no escape from the conclusion that not only were the validity of the bonds and the validating act presented, but that that was the only controverted issue adjudicated by the Federal Court in that cause. Judgment could not have been entered by that court without upholding the effectiveness of the validating act and the legality of the bonds.

The Supreme Court of Illinois in holding the identical bonds partially void in this case refused to recognize the validity and binding effect of the judgment of the Federal District Court. Citing its previous decision in *People v. Orris*, 374 Ill. 536, it said (R. 163):

“The Federal Court was not the forum where the constitutionality of the validating act could be finally determined. It was held that the final determination of such questions was for the state courts and we now adhere to the holding in that case.”

This court has repeatedly held that where the highest court of a state disregards a judgment or decree of a court of the United States, a federal question is thereupon raised which is reviewable by this court under Section 237(b) of the Judicial Code, 28 U. S. C. A. 344(b) (Appendix F).

In the recent case of *Stoll v. Gottlieb* (1938), 305 U. S. 165, 83 L. ed. 104, this court stated:

"This certiorari was allowed to review a judgment of the Supreme Court of Illinois. That court had denied effect to a plea of *res judicata* arising from orders of a district court in bankruptcy. Provisions declaring the supremacy of the Constitution and the extent of the judicial power and authorizing necessary and proper legislation to make the grants effective confer jurisdiction upon this Court to determine the effect to be given decrees of a court of the United States in state courts. As the contention is that the ruling below disregarded decrees of a court of the United States it raised a federal question reviewable under No. 237(b) of the Judicial Code, 28 U. S. C. A. 344(b)."

See also *Dupasseur v. Rochereau*, 88 U. S. 130, 22 L. ed. 588; *Crescent City, etc. Co. v. Butchers Union, etc.*, 120 U. S. 141, 30 L. ed. 614; United States Revised Statutes, Section 905, 28 U. S. C. A. 687.

II.

After the decision of the Supreme Court of Illinois in 1934 (*People v. Orvis*, 358 Ill. 408, 193 N. E. 213), in which it held that a tax levied to pay these bonds was invalid, the General Assembly of Illinois passed the 1935 validating act (Appendix E).

The District Court case was filed by The Ohio National Life Insurance Company after that act was in force and effect. In the complaint in that court that act was set forth in full and by the sworn answer of the School District over the hand of its secretary its effectiveness was put in issue. It was passed on by the district court during the trial of the case.

The inevitable effect of the decision of the District Court was to hold that the bonds were validated by that act of the General Assembly and were valid and binding obligations of the School District. Prior to the District Court case the validating act had not been construed or adjudicated by any court. The Supreme Court of Illinois itself has held in *People v. Lawson*, 351 Ill. 507 at 509, that the doctrine of *res judicata* applies to all questions of fact or law, including constitutional as well as all other questions.

In total disregard of the judgment of the District Court the Supreme Court of Illinois erroneously stated in this case (R. 163) :

"The issues, as raised by the pleadings, show that the insurance company relied upon the validating act of June, 1935, in support of its claim that there was interest due on its bonds. But from the pleadings of that case, appearing as evidence in this action, it does not appear that any question was raised as to the validity, construction or application of said validating act. The judgment entered permitted a recovery upon the assumption that the act was valid."

If, as stated in that quotation, the issue of the validity of the bonds was raised by the pleadings and the insurance company relied upon the validating act of 1935 in support of its claim, how can it be said that it was not necessary for the court to construe the effect of that act? The court could not avoid holding that act and the bonds valid in order to adjudge the payment of interest.

By what appears to be an inconsistency, the Supreme Court of Illinois in its opinion admits that the Federal Court judgment is conclusive as to the amount of interest sued for. The pleadings, as pointed out, aver the validity

of the bonds. If the bonds were invalid there certainly could be no recovery of interest. On the other hand, if there could be recovery of interest, it could be only because the bonds were valid. The validity of the bonds was necessarily the basic issue.

It is therefore respectfully submitted that the validity of the bonds was placed in issue and was the basic issue in the federal court as was the validity of the validating act, and that those issues were decided in favor of the plaintiff insurance company.

Under the doctrine of *Hanna v. Read*, 102 Ill. 596, the privity between the insurance company and the Smalls was such as to give the latter also the advantage of that adjudication.

The Supreme Court of Illinois has overlooked the decisions of this court in *Deposit Bank of Frankfort v. Board of Councilmen of Frankfort*, 191 U. S. 499, 48 L. ed. 276, and *Stoll v. Gottlieb*, 305 U. S. 165, 83 L. ed. 104.

In the *Frankfort* case a decree of the federal court granting exemption from taxes under the so-called Hewitt Law of Kentucky was held to be a conclusive adjudication and to constitute exemption from taxes notwithstanding a later decision of the Supreme Court of Kentucky in *Deposit Bank of Owensboro v. Daviess County*, 102 Ky. 174, 44 S. W. 1131, holding that that statute did not grant exemption. It was held that since the federal court decree had never been reversed it constituted a bar against the further collection of taxes from that taxpayer. The later contrary opinion of the highest court of Kentucky involving the same statute did not deprive that decree of its effect.

So, also, in *Stoll v. Gottlieb*, above cited, this court overruled the Supreme Court of Illinois, and held that a decree of the federal district court upholding the jurisdiction to cancel a guarantee was conclusive and binding upon the courts of Illinois.

It may be stated that the federal district court, in upholding the effectiveness of the validating act, was supported by ample authority in Illinois and elsewhere.

The 2½ per cent indebtedness limit was statutory. The constitutional limit of indebtedness of municipalities in Illinois is 5 per cent. The first effort to reduce the limit by statute to 2½ per cent was held unconstitutional in *Michaels v. Hill*, 328 Ill. 11. A later debt limitation act was passed in 1928, which in part is still effective.

With reference to submission to the voters: the constitution of Illinois, as recognized by the opinion of the Supreme Court of Illinois here under consideration, does not require a vote of the people on any bond issued by a municipality.

The general rule as to validation, applied to municipal bonds in the note in 132 A. L. R. 1388, that the legislature may by retroactive statute legalize the unauthorized acts and proceedings of subordinate municipal agencies where such acts and proceedings might have been previously authorized by the legislature, is supported by many Illinois cases such as *People v. Militzer*, 272 Ill. 387; *People v. Madison*, 280 Ill. 96; *People v. Dix*, 280 Ill. 158; *People v. Howell*, 280 Ill. 477; *People v. Fifer*, 280 Ill. 506; *People v. Stitt*, 280 Ill. 553; *People v. Craft*, 282 Ill. 483; and particularly with reference to taxes in *People v. Matthews*, 282 Ill. 85; *People v. Railroad Company*, 284 Ill. 87; and with reference to bonds in *Worley v. Idleman*, 285 Ill. 214; and

also generally in *Fisher v. Fay*, 288 Ill. 11; *People v. Edwards*, 290 Ill. 464; *People v. Opie*, 301 Ill. 11; *People v. Graham*, 301 Ill. 446; *People v. Railroad Company*, 323 Ill. 536; *People v. Railroad*, 324 Ill. 43; *People v. Padley*, 340 Ill. 314; *People v. Railway Company*, 349 Ill. 476; *People v. Railway Company*, 368 Ill. 199; and *Krause v. Peoria Housing Authority*, 370 Ill. 356.

Those cases cover many types of validation, including validation of school districts originally organized under unconstitutional statutes, as well as bonds issued and taxes levied by such districts. Since the legislature could originally have authorized a debt over 2½ per cent and could have permitted the issuance of bonds without referendum, the validation here was proper and lawful.

There is a second line of cases in Illinois which has developed largely since the entering of judgment by the Federal District Court, which seems to proceed on the theory that only those acts may be validated which originally had authority in legislation previously passed. Such a case is *People v. C. & E. I. Railway Company*, 343 Ill. 101. In some of those cases the statement is made that a "void" proceeding cannot be validated. But that is inconsistent with the long line of decisions, above cited, in many of which school districts formed and taxes levied under unconstitutional statutes were permitted to be validated. Nothing could have been more "void" than such districts and taxes.

The two lines of cases are logically irreconcilable, but the former line is certainly in accordance with the larger number of authorities. 132 A. L. R. 1388.

This court in *Bolles v. Town of Brimfield*, 120 U. S. 759, 30 L. ed. 786, and *Anderson v. Town of Santa Anna*, 116

U. S. 356, 29 L. ed. 633, had found the law of Illinois on validating acts to be that "the legislature may by retro-active statutes legalize the unauthorized acts and proceedings of subordinate municipal agencies where such acts and proceedings might have been previously authorized by the legislature." That was in accord with the larger number of Illinois cases above referred to. If other cases in Illinois be construed to be in conflict with that rule, then the doctrine stated in *Hines Trustees v. Martin*, 268 U. S. 458, 69 L. ed. 1050 at 1053, would be applicable. It is said:

"Where state decisions are in conflict, or do not clearly establish what the local law is, the Federal court may exercise an independent judgment and determine the law of the case."

These authorities establish that the federal court was right in its decision. But the important consideration is that it did enter a judgment and that judgment is *res judicata* between the parties under the authorities cited in the earlier part of this division of the Argument.

III.

The Supreme Court of Illinois in its opinion says: "The Federal Court was not the forum where the constitutionality of the validating act could be finally determined."

The reasoning implicit in that statement confuses "rule of decision" with *res judicata*. Had the validating act of 1935 been adjudicated by the Supreme Court of Illinois prior to the federal court proceeding, the rule of decision might have been applicable, but that was not the situation. The question came originally before the federal court. It was necessarily adjudicated between the parties to this litigation. That adjudication established a legal relationship between the parties which the Supreme Court

of Illinois cannot sever or modify. The case of *Deposit Bank of Frankfort v. Board of Councilmen of Frankfort*, 191 U. S. 499, 48 L. ed. 276, amply sustains this position, as does *Stoll v. Gottlieb*, 305 U. S. 165, 83 L. ed. 104.

The position thus taken by the Supreme Court of Illinois is clearly erroneous.

The Federal District Court had just as complete original jurisdiction to determine the question of the validity of the statute as would the state court had the suit been brought there. The jurisdiction of the two courts was concurrent.

In the case of *Ex parte McNeil*, 20 L. ed. 624 at 626, the court said:

"A state law may give a substantial right of such a character that where there is no impediment arising from the residence of the parties, the right may be enforced in the proper federal tribunal whether it be a court of equity of admiralty, or of common law. The statute in such cases does not confer the jurisdiction. That exists already, and it is invoked to give effect to the right by applying the appropriate remedy. This principle may be laid down as axiomatic in our national jurisprudence. A party forfeits nothing by going into a Federal tribunal. Jurisdiction having attached, his case is tried there upon the same principles and its determination is governed by the same considerations, as if it had been brought in the proper state tribunal of the same locality. *Robinson v. Campbell*, 3 Wheat. 223; *U. S. v. Knight*, 14 Pet. 315; *The Orleans v. Phocbus*, 11 Pet. 184; *Thompson v. Phillips*, 1 Bald. 272, 204; *Lorman v. Clarke*, 2 McLean 568; *Ex parte Biddle*, 2 Mass. 472; *Johnston v. Vandyke*, 6 McLean 423; *Prescott v. Nevers*, 4 Mass. 327; *Clark v. Sohler*, 1 Woodb. & M. 368."

The Federal Court, having had jurisdiction of the parties and subject matter, had the duty to determine the constitutionality of the validating act. The judgment of that court is entitled to full faith and credit and is *res judicata* in any other court.

In *Stoll v. Gottlieb*, *supra*, Mr. Justice Reed stated at page 107:

“The Congress enacted, as one of the earlier statutes, provisions for giving effect to the judicial proceedings of the courts. This has long had its present form. This statute is broader than the authority granted by Article Four, section one, of the Constitution to prescribe the manner of proof and the effect of the judicial proceedings of states. *Under it the judgments and decrees of the Federal courts in a state are declared to have the same dignity in the courts of that state as those of its own courts in a like case and other similar circumstances.*” (Italics ours.)

In conclusion we submit that if the Supreme Court of Illinois is permitted to disregard the judgment of the District Court, the rights of citizens of the United States to have their rights adjudicated by a court set up under the authority of the United States is in effect abrogated.

For the foregoing reasons, it is respectfully submitted that the writ of certiorari prayed by the petitioners should be granted.

Respectfully submitted,

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